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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,233	08/24/2001	Ray Frankulin	019411-001410US	3401
20350	7590	06/09/2008	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP			PEZZUTO, ROBERT ERIC	
TWO EMBARCADERO CENTER				
EIGHTH FLOOR			ART UNIT	PAPER NUMBER
SAN FRANCISCO, CA 94111-3834			3714	
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			06/09/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAY FRANKULIN and STAN JONES

Application 09/939,233
Technology Center 3700

Mailed: [Date of mailing]

Before DALE M. SHAW *Chief Appeals Administrator.*

SHAW, *Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received at the Board of Patent Appeals and Interferences on February 21, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

EXAMINER'S ANSWER

The Examiner's Answer mailed May 10, 2007, is defective. The appendix,

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Evidence Relied Upon (pg. 2) , states that “No evidence is relied upon by the examiner in the rejection of the claims under appeal.” A review of the file reveals that prior art was applied to the rejections of the claims on appeal; see the appendix, Grounds of rejection (pg. 3).

In accordance with MPEP '1207.02, the AEvidence Relied Upon@ (section 8) should include:

(8) *Evidence Relied Upon.* A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Before further review, the Examiner must mail a PTOL-90 that will correct and amend the Evidence Relied Upon section and identify all references used to reject the claims on appeal.

CONCLUSION

Accordingly, it is

ORDERED that the application is electronically returned to
1) hold the Examiner's Answer mailed May 10, 2007, defective;
2) issue and mail a Form PTOL-90, amending and/or correcting the\\
Examiner's Answer (Evidence Relied Upon); and

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3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of

Patent Appeals and Interferences at 571-272-9797

DMS/gjh

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